



RQ-845

Texas Department of Health

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August 28, 1995

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

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FILE # ML-35653-95
I.D. # 35653

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AUG 30 1995

Opinion Committee

Dear General Morales:

The purpose of this letter is to request an opinion from your office on an issue which has arisen under the Texas Civil Statutes, Article 4512d (the "Act") relating to the licensure of athletic trainers. The Act created the Advisory Board of Athletic Trainers which is located within the Texas Department of Health. The question is as follows:

What effect, if any, does the 1981 amendment to Section 8 of the Act have on Attorney General Opinions M-1012 (1971), H-471 (1974) and H-1306 (1978)?

In Attorney General Opinions M-1012, H-471 and H-1306 your office stated that athletic coaches who do not hold themselves out to the public as athletic trainers, whose profession or occupation is that of an athletic coach, and who are not compensated to perform the activities of an athletic trainer are exempt from the Act even though there is not an expressed exemption for athletic coaches. The opinions allow an athletic coach to utilize physical modalities to effect rehabilitation and treatment of athletes. The opinions rely on Section 8 of the Act. At the time of the opinions, that section stated that "no person may hold himself out as an athletic trainer or perform, for compensation, any of the activities of an athletic trainer as defined in this Act without first obtaining a license under this Act." The opinion stated that since coaches were not compensated for performing the activities of an athletic trainer, but were compensated as coaches, the Act did not apply.

In 1981 Section 8 was amended by the legislature to delete the phrase "for compensation". The section now prohibits a person from holding himself out as an athletic trainer or performing the activities of an athletic trainer without a license. The compensation of an individual is no longer a consideration. Does the amendment to Section 8 require reconsideration of the previous Attorney General opinions? If a person, whether his or her job position is listed as an athletic coach or an athletic trainer, is carrying out, upon the advice and consent of a team physician, the practice of prevention and/or physical rehabilitation of injuries incurred by athletes, is that individual required to be licensed under the Act?

The Advisory Board and the TDH have encountered individuals who are employed under the title of "coach" but whose job responsibilities are not primarily to coach the athletes but are to work with or on the injured athletes in the manner described in the definition of an "athletic trainer" in Section 1 of the Act.

This opinion request was previously forwarded to your office by letter dated February 12, 1990, by Dr. Robert Bernstein, the previous Commissioner of Health. It was assigned the number of RQ-1940. By letter dated December 20, 1990, the Opinion Committee stated that it was deadlocked over the answer but that there was substantial sentiment that the amendment to Section 8 of the Act altered the result of Attorney General Opinion H-1306. The letter indicated that the Opinion Committee wished to give the upcoming legislature an opportunity to address the situation; however, the issue has not been addressed in any legislative session since that time. In fact, no amendments to the Act have occurred since 1985.

If you require any further information, please contact Linda Wiegman, an attorney with the Office of General Counsel for the Texas Department of Health at (512) 458-7236.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Smith", with a stylized flourish at the end.

David R. Smith, M.D.
Commissioner of Health